

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
240-777-6600

**Case Nos. A-6088**

**APPEAL OF TIMOTHY G. BENDER**

OPINION OF THE BOARD

(Hearing held October 19, 2005)  
(Effective Date of Opinion: January 20, 2006)

Case No. A-6088 is an administrative appeal filed by Timothy G. Bender ("Appellant") charging administrative error on the part of the County's Department of Permitting Services ('DPS') in issuing a Notice of Violation dated June 2, 2005, for the construction of an accessory structure in the front yard of the property located at 8502 Lynwood Place, Chevy Chase, Maryland 20815 (the 'Property').

Pursuant to Section 59-A-4.4 of the Montgomery County Zoning Ordinance, codified as Chapter 59 of the Montgomery County Code (the 'Zoning Ordinance'), the Board held a public hearing on the appeal on October 19, 2005. Assistant County Attorney Malcolm Spicer represented DPS. Appellant appeared on his own behalf, without counsel. Philip P. Costas, the owner of the property located at 8501 Lynwood Place (across the street from Appellant's property), intervened.

Decision of the Board:      Administrative appeal **denied**.

**FINDINGS OF FACT**

**The Board finds by a preponderance of the evidence that:**

1. The Property, known as 8502 Lynwood Place, is located in the R-90 zone at the corner of Lynwood Place and Laird Place in Chevy Chase, Maryland. The Property is identified as Lot 19, Block 24, Chevy Chase Section 4A.

2. On November 17, 2003, DPS issued building permit number 325010 for the construction of an 80 square foot (8' x 10') shed on the Property. The site plan submitted with the request for the building permit indicated that the shed would be placed on the side of the Property which borders Laird Place.

3. Susan Scala-Demby, Zoning Manager for DPS, testified that because the Property is a corner lot, for purposes of the Zoning Ordinance, it has two front yards (one along each street).

4. Ms. Scala-Demby testified that after the shed was constructed, intervenor Philip Costas filed a complaint concerning the shed with DPS. She further testified that the complaint was investigated by DPS, and that the shed was found to be in the front yard of the Property along Laird Place.

5. Ms. Scala-Demby testified that the shed is considered an accessory structure under the Montgomery County Zoning Ordinance, and that pursuant to section 59-C-1.326 of the Zoning Ordinance, accessory structures must be located in the rear yard.

6. Ms. Scala-Demby testified that she contacted Appellant via telephone to tell him that the permit for the shed had been issued in error and should not have been approved for the front yard. She testified that Gail M. Lucas, Permitting Services Manager for DPS, and Gilbert Dyer, DPS Inspector, had similarly contacted the Appellant to convey this information.

7. On September 17, 2004, Ms. Scala-Demby testified that a letter was sent from Ms. Lucas to Appellant and his wife, reiterating the conversations referenced above, and indicating that the permit had been issued in error and was revoked. The letter further stated that Ms. Scala-Demby, Ms. Lucas, and Mr. Dyer had all advised Appellant that the shed must be moved or, alternatively, that the Appellant must receive a zoning variance from the Board of Appeals. The letter stated that because to date, the shed had not been moved and DPS had not received notice that Appellant intended to apply for a variance, DPS was issuing a civil citation.

8. Ms. Scala-Demby testified that on September 28, 2004, Inspector Dyer issued a civil citation regarding the shed, mailed Certified Mail to Appellant.

9. Appellant testified that the Post Office left two notes regarding the Certified Mail at his house, and that he signed each one and left them taped to his door, with a check in the box to indicate that the mail could be left at the house, but that he never received the letter.

10. Ms. Scala-Demby further testified that at the court proceeding on the civil citation, because Appellant did not receive the citation and thus did not have notice of the resultant court proceeding, counsel for DPS had entered a nolle prosequi in open court without prejudice for DPS to issue an additional citation if Appellant did not apply for a variance.

11. Ms. Scala-Demby testified that DPS received a second telephone call from Mr. Costas complaining about the shed, and as a result, sent Inspector Peter Hrtzak out to investigate. Mr. Hrtzak found that the shed had not been moved, and issued a Notice of Violation, dated June 2, 2005. That is the Notice that Appellant charges was issued incorrectly and that is the subject of this appeal. Ms. Scala-Demby testified that the Notice was correctly issued, and that the shed remains, to the best of her knowledge, in violation of the Zoning Ordinance requirements.

12. Appellant's testimony indicates that he tried to follow proper procedures in getting a permit for his shed. Taken at face value, his testimony indicates that he has received inconsistent information from County officials about the actions he should take to rectify the situation regarding the placement of the shed, and that for whatever reason, he does not always receive his mail. Among other things, Appellant testified that he was told that he couldn't apply for a variance without a building permit denial, and that he had never received the denial, despite DPS saying that they had sent it. He testified that Ms. Lucas had told him that no variance was possible in this case. He testified that he was promised information from the Office of the County Attorney regarding a possible claim against the County, which he never received. He testified that he had come to the County Office Building to apply for a variance, check and paperwork in hand, and was told that he would not get the variance he was seeking. He testified that he had been told that under the Zoning Ordinance, his Property did not have a "rear yard." He testified that the instructions on the NOV were that he should either apply for a variance or to move the shed to the "rear yard," and that since he had been told no variance was possible and that he did not have a "rear yard," he did not know what choices were available to him.

13. Appellant offered no testimony or evidence to dispute the DPS finding that the shed is located in a front yard, in violation of the Zoning Ordinance.

### **CONCLUSIONS OF LAW**

1. Section 8-23 of the Montgomery County Code authorizes any person aggrieved by the issuance, denial, renewal, or revocation of a permit or any other decision or order of DPS to appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, or revoked, or the order or decision is issued. Section 59-A-4.3(e) of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*. The burden in this case is therefore upon the County to show that the Notice of Violation was properly issued.

2. Section 59-C-1.326(a)(1) of the Zoning Ordinance states that accessory structures can be located in the rear yard only. A shed is considered an accessory structure for purposes of the Zoning Ordinance.

3. Pursuant to section 59-C-1.323 of the Zoning Ordinance, as interpreted by DPS in published Interpretation/Policy No. ZPO404-3, corner lots such as the subject Property are considered by DPS to have 2 front yards. (See also section 59-A-5.33(d) of the Zoning Ordinance, which states that corner lots have two front yards and are subject to established building line standards on both streets.)

4. DPS and Appellant agree that the shed was built pursuant to a building permit which was later revoked as erroneous, and that the current location of the shed is in the front yard of the Property.

5. In light of the foregoing, the Board finds that the Notice of Violation dated June 2, 2005, which cited Appellant for the construction of an accessory structure in the front yard the Property in violation of section 59-C-1.26 of the Zoning Ordinance, was properly issued.

6. The appeal in Cases A-6088 is **DENIED**.

On a motion by Vice Chairman Donna L. Barron, seconded by Member Angelo M. Caputo, with Allison Ishihara Fultz, Chair, and Member Caryn L. Hines in agreement, and Wendell M. Holloway necessarily absent, the Board voted 4 to 0 to deny the appeal and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

A handwritten signature in black ink, reading "Allison S. Fultz". The signature is written in a cursive, flowing style.

Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 20<sup>th</sup> day of January, 2006.

---

Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2-A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.